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Supreme Court, U.S.
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No. 99-1349

In The

Supreme Court of the United States

MATTHEW F. HALE,

Petitioner,

v.

THE COMMITTEE ON CHARACTER AND FITNESS OF THE ILLINOIS BAR, and THE ILLINOIS BAR,

Respondents.

On Petition For Writ Of Certiorari To The Illinois Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Honorable Court review a State bar admission committee's decision refusing to certify the petitioner's application for membership in the bar when the record shows that the decision was based upon factual considerations relating to the petitioner's past misconduct, lack of credibility and failure to satisfy his burden of proof?

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STATEMENT OF THE CASE

I. OVERVIEW

An applicant seeking admission into Illinois' bar must prove, by clear and convincing evidence, that he has "good moral character." Ill. Sup. Ct. R. 701 & 709(b); Ill. Bar. Admis. R. 4.1.[1]

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[1] Illinois has established a series of procedures, the adequacy of which are not challenged here, by which a bar applicant's proof of "good moral character" is assessed. An applicant must file an application with the Illinois Board of Admissions to the Bar. Ill. Sup. Ct. R. 704(a). The Board forwards the application to the National Conference of Bar Examiners for a character and fitness report. Ill. Sup. Ct. R. 704(b). After receiving the Conference's report, the Board sends the questionnaire to the Committee on Character and Fitness which determines "whether to recommend to the Board that the applicant possesses the requisite character and fitness for admission to practice law." Ill. Bar Admis. R. 4.1. *See also* Ill. Sup. Ct. R. 704(b); Ill. Bar. Admis. R. 3.2c. A Committee member initially evaluates the application. Ill. Bar. Admis. R. 3.2d. If the member is not prepared to recommend certification, a three-member Inquiry Panel assesses the application. Ill. Bar. Admis. R. 3.2d. The Inquiry Panel's review is conducted in the manner determined by the Chairperson, and may entail the applicant's appearance before one or more members. Ill. Bar. Admis. R. 5.2b. When the Inquiry Panel votes to withhold certification, the application is automatically referred to a Hearing Panel for an evidentiary hearing. Ill. Bar. Admis. R. 5.3a. A bar applicant may appeal an adverse Hearing Panel decision to the Illinois Supreme Court, Ill. Sup. Ct. R. 708(d), but the court's review is discretionary. *See also In re Latimer*, 11 Ill. 2d 327, 330, 143 N.E.2d 20, 22 (1957) ("Normally we will not review the discretion exercised by [the Committee], except in the unlikely event that there has been an arbitrary refusal of a certificate.").

After an evidentiary hearing in which Petitioner Matthew F. Hale testified and called witnesses, a five-member Hearing Panel of the Third District Committee on Character and Fitness of the Supreme Court of Illinois issued a written opinion in which it unanimously held that Hale lacked credibility and had failed to satisfy his burden of proving good moral character. Cert. Pet., App. C.[2] While Hale now claims that the Hearing Panel refused to recommend his certification for admission into Illinois bar because of his beliefs and speech, the Hearing Panel, in a decision based upon the "entire record," expressly found that "[t]his case is not about Mr. Hale's First Amendment rights." Cert. Pet., App. C, p. 7a, 8a & 13a.

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[2] Citation format in this response is as follows:

Citation Form Document Reference

Cert. Pet. Matthew F. Hale's Petition for *Writ of Certiorari* Cert. Pet., App. A *In re Matthew F. Hale*, M.R. 16075, Illinois Supreme Court Orders dated November 12, 1999, attached in Appendix A of Cert. Pet.

Cert. Pet., App. C *In re Application of Matthew F. Hale*, Hearing Panel's Findings and Conclusions, attached in Appendix C of Cert. Pet.

Cert. Pet., App. D *In re Application of Matthew F. Hale*, Inquiry Panel's Decision, December 16, 1998, attached in Appendix D of Cert. Pet.

Tr. Transcript of Proceedings before the Hearing Panel, April 10, 1999.

HP Ex. Exhibits Offered before the Hearing Panel.

II. RECORD BEFORE THE HEARING PANEL

In his *certiorari* petition, Hale skimps discussion of the record, and perhaps for good reason, as the record underscores Hale's lack of fitness. We turn to the record before the Hearing Panel:

A. Hale's Participation in Obstruction of Justice

On May 24, 1991, Hale and his brother carried placards and chanted white supremacist slogans near the University of Peoria. Tr. 182-83; *People v. Hale*, 236 Ill. App. 3d 1113, 655 N.E.2d 333 (3rd Dist. 1992) (Table). A car containing several black men pulled up, and one of them removed a baseball bat. *Id.* Hale and his brother were together in a car. Tr. 182-83. Hale's brother retrieved a handgun from the glove compartment and aimed it at the black men, who then dispersed. Tr. 182-83. Before the Hearing Panel, Hale acknowledged that carrying a concealed weapon was against the law, but maintained that he was "not sure" whether he knew about the gun. Tr. 184.

Hale's brother fled. *Hale, supra*, p. 2. A police officer apprehended the petitioner. *Id.* Hale refused to answer the officer's questions about the gun. Tr. 183-84. After about 30 minutes of riding around in a squad car (while Hale's brother, armed with a deadly weapon, was at large), Hale professed that he did not know the identity of the person with him.[3] Tr. 184-86.

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[3] Hale was convicted of felony obstruction of justice as a result of these events. Although the Illinois Appellate Court

In his Hearing Panel testimony, Hale proclaimed: "I don't lie. I tell the truth." Tr. 183. Hale, however, admitted that he had lied to the police officer on May 24, 1991. Tr. 185-87. Hale scoffed at the Committee's questions on the subject, stating, "I think this whole line of questions are [sic] ridiculous." Tr. 186.

B. Order of Protection Entered Against Hale

In January 1999, Jaqueline Casillas, an ex-girlfriend of Hale's, sought an order of protection, naming Hale as the respondent. *See* HP Ex. 7. Casillas alleged that Hale was abusive in that he had called her a "mongrel" and a "bitch" (allegations Hale denied before the Hearing Panel, Tr. 267); said that he suspected her of not being "completely white;" asserted that he has had people who disagree with him "watched;" and beckoned her to leave his home or else he would be "forced to humiliate" her. Tr. 259. Hale did not appear in court to contest these allegations because the drive was too far and he did not want to be involved with Casillas. Tr. 257, 265-67. A Champaign County Circuit Court entered an order of protection against Hale, in effect until February 2001. Tr. 257; HP Ex. 7.

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reversed the conviction on *Miranda* grounds, Illinois law permits consideration of the underlying conduct in bar admission proceedings. *See In re Glenville*, 139 Ill.2d 242, 565 N.E.2d 623 (1990); *In re Childress*, 138 Ill. 2d 87, 561 N.E.2d 614 (1990).

C. Hale's Arrest History

In addition to the obstruction of justice charge discussed above, Hale has a history of arrests:

- In 1990, Hale was arrested for violating a city ordinance for burning an Israeli flag. Tr. 105, 223. Before the Hearing Panel, Hale dismissed the flag-burning incident as a non-crime. Tr. 223.
- Also in 1990, Hale was found guilty of distributing hand bills. Tr. 221-24. Hale failed to mention this incident on his bar application, which asked: "Have you ever either as an adult or juvenile been cited, charged or convicted for any violation of any law?" Tr. 222-24.
- On January 5, 1992, Hale was arrested for assault and battery as a result of a physical altercation with a security officer. Tr. 221-23. According to the arrest report, Hale pushed and attempted to punch the officer, and repeatedly shouted profanities. *See* HP Ex. 2.
- In 1998, Hale was cited for littering based upon his throwing newspapers from an automobile. Tr. 224.

D. Hale's Disruptive Behavior While in College

In his Hearing Panel testimony, Hale acknowledged that he advocates, as "effective technique," disrupting Holocaust remembrances and black history celebrations. Tr. 198. He did such things during his college days at Bradley University, where, according to Hale, he "made a lot of news." Tr. 230, 246.

Examples of Hale's disruptive behavior while in college include:

- In April 1990, Hale attended a prayer meeting against racism. Tr. 199, 246-47. Hale may have given Nazi salutes at the prayer breakfast, albeit he claimed lack of specific recall before the Hearing Panel. Tr. 246. Hale did not deny leaving (at the prayer meeting) a swastika-emboldened card listing his address and urging membership in the American White Supremacist Party. Tr. 227-28. Hale deemed the card "an educational thing," but admitted that it could have had an insulting effect. Tr. 229. When asked whether he believed that the Nazi salutes were insulting, Hale responded, "No more than if they said that all men are created equal." Tr. 247.

- Bradley University officials placed Hale on disciplinary probation as a result of Hale having violated certain student handbook regulations. Tr. 246; HP Ex. 5.

- A Bradley University disciplinary body held a hearing based upon Hale having called a Mark Cantor a "Jew Boy." Tr. 225-26; HP Ex. 5. Hale did not list this incident on his law school application. Tr. 225-26.

E. The Roberson Letter

A few weeks before he commenced law school, Hale wrote a letter to Vicky Roberson in response to her published statements about affirmative action in *The Peoria Journal Star*. The letter stated:

> Your comments appearing in the Saturday, July 22nd issue of The Journal Star were as pathetic as they were asinine. When in the hell are people of your ilk going to face the fact that the nigger race is inferior in intellectual capacity. And I underlined inferior. You have examples all around you, and yet you continue to cling to the misbegotten equality myth, which is not only destroying our universities but also our whole country. Is it going to take your rape at the hands of a nigger beast or your murder before you become aware of the problem. I really do not wish to browbeat you, but the fact is that people like you are more dangerous to the future of this country than the niggers in themselves are. I'm looking forward to the day when our people's eyes are opened and when people who believe in the equality myth no longer have any power to promote this garbage to others. It is about time you face the truth.

Tr. 216-17; HP Exs. 3a, 5; Cert. Pet., App. D, p. 22a.

When questioned about this letter by Hearing Panel members, Hale responded: "I do not believe that my statement is it going to take your rape at the hands of a nigger beast or your murder . . . to be insulting. However, when I stated that her letter was . . . pathetic, it is asinine. People of your ilk, one can construe that as being insulting." Tr. 217. Although Hale said that he would not have written the letter today, he contended that "[t]he rules of professional responsibility . . . don't apply to a fellow in his own house writing his own letter to somebody, to something unrelated to the law." Tr. 244, 249.

F. The World Church of the Creator

In October 1995, Hale became the "Pontifex Maximus" (the Supreme Leader) of a small, young, "religious" organization known as "The World Church of the Creator." Tr. 166-67, 198; Cert. Pet., App. D, p. 16a.

Hale repeatedly testified that his "church" does not believe in violence. Tr. 167-68, 170, 177, 188-89, 201. However, the "battle cry and greeting" of Hale's "religion," is "RAHOWA," which means "racial holy war." Tr. 200. An internet website maintained by Hale pronounces, "Unless the white race soon becomes aware, aroused, organized, and militant, we will soon be an extinct species." Most of Hale's literature includes the slogan "*Delenda Est Judiacia*," which means "Judaism must be destroyed." Tr. 220. The "Third Commandment" of "Creativity" (the name of Hale's "religion") states, "inferior mud races are our deadly enemies, and most of all is the Jewish race. It is our immediate objective to . . . keep shrinking our enemies." HP Ex. 8. The final bold-face words in the White Man's Bible, a book that Hale "treasures and cherishes," exclaims: "Let us get into the fight today, now! You have no alibi, no other way out, White Man! It's either fight or die!" Tr. 170, 196-97; HP Ex. A.

G. Hale's Hearing Panel Witnesses

In an effort to prove his good moral character to the Hearing Panel, Hale called an attorney, two members of his "church," two fellow white supremacists and his father as witnesses.

The Champaign, Illinois law firm of Hatch & McPheters employed Hale as a clerk for two and a half months in 1998. Tr. 15, 29. Although not mentioned in Hale's *certiorari* petition, Attorney Brian McPheters testified that he had "a significant reservation" about whether Hale could be an officer of the court. Tr. 32-33. McPheters also believed Hale to have been "certainly less than forthright" in failing to disclose his outspoken white supremacist beliefs (that could have affected the law firm's business and good standing in the community) during the interview process. Tr. 44-47, 50.

Of the two "church" members called by Hale as witnesses before the Hearing Panel, only one, Benjamin Smith, had even met Hale before the hearing. Smith's post hearing killing spree, see *infra*, pp. 11-12, wholly undermines his testimony that he and Hale believed in a "revolution of values" to be accomplished by completely non-violent and legal means. Tr. 160.

The two non-church members called as witnesses, John McLaughlin and Arthur Jones, used their testimony as a forum to propagate hate of minorities and to rally against the Fourteenth Amendment to the United States Constitution. Tr. 75-79, 91-92, 94, 111, 115. As an example of Hale's supposed good character, Jones related that Hale had always appeared on time when they met. Tr. 105. McLaughlin felt that Hale should be certified because there is a need for lawyers to defend white supremacists. Tr. 96.

H. Hale's Hearing Panel Testimony

Hale testified that he could swear to protect and defend the United States Constitution, the Illinois Constitution, and the laws of the State of Illinois. Tr. 162-63. Hale, however, acknowledged that the "Sixth Commandment" of his "religion" requires him to put his "own race above every other loyalty." Tr. 192. Hale also averred that "democracy has been twisted," Tr. 176, and declared that "one day we will look back and say how on earth did we view the Constitution as being something alien to our people. I look forward to that day." Tr. 203.

While Hale intends to seek repeal of the Fourteenth Amendment, Hale insisted that his beliefs are consistent with the Fourteenth Amendment, and the Constitution in general. Tr. 188, 208-09. Some of these "consistent" beliefs include a strong objection to multi-racial society, as Hale posited that white individuals should phase out dealings with other races as soon as possible. Tr. 208-09, 233, 236. Hale branded the precept "all men are created equal" an "idiotic notion" since non-white races are inferior. Tr. 189-90, 194, 207. Hale described the average black man as intellectually inferior to the average white man. Tr. 179. Individuals of the Jewish faith also did not escape Hale's wrath. Tr. 234. According to Hale, a self-professed Anti-Semite, Jews are "morally inferior," "morally bankrupt," and "orientals," who should be driven from power and sent "back to Israel." Tr. 187, 193, 207, 234. Hale acceded that he follows the teachings of Ben Klassen, the founder of Hale's "church," who wrote "do not employ

niggers," and advocated "shrinking" the "enemies" of the white race. Tr. 196-97.

Hale maintained that he did not feel torn between his beliefs and professional conduct rules that require an attorney to treat others fairly. Tr. 261. Hale regarded Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct (which prohibits discrimination) as not applying to his private behavior or exercise of religion. Tr. 268-69. Hale theorized that his "personal beliefs would be irrelevant to representation." Tr. 262. Hale also said that he could "deal with blacks." Tr. 261. As an example, Hale disclosed: "when I go to the grocery store, I buy groceries, I don't call them nigger or anything else, I buy groceries and I'm on my way." Tr. 261. While Hale claimed that he could represent minorities, he conceded, "I probably would never have a black client personally." Tr. 235.

III. ILLINOIS SUPREME COURT PROCEEDINGS

Following entry of the Hearing Panel's decision refusing to certify Hale's bar application, Hale petitioned the Illinois Supreme Court to exercise discretionary review. During the pendency of Hale's petition, and consistent with the proposition that the Illinois Supreme Court's "inherent power to regulate admission to the bar" allows "inquir[y] into events subsequent to the certification," *In re Loss*, 119 Ill. 2d 186, 192-93, 518 N.E.2d 981, 983 (1987), the Committee filed a Motion for Leave to File a Proffer and Argument Concerning Events Occurring after the Hearing Panel's Decision. *See* Cert. Pet., App. A, p. 2a. The proffer cited Hearing Panel witness Benjamin Smith's commission of two murders and a series of armed

assaults on minority group members within days after the Hearing Panel had issued its decision denying Hale's certification, *see, e.g.*, Dedman, Bill, Suspect Sought in Attacks Said to Kill Himself, *New York Times*, July 5, 1999, p. 1, as well as Hale's reactions to Smith's conduct as reported in the media.

On November 12, 1999, the Illinois Supreme Court denied Hale's Petition for Review, as well as the Committee's Motion for Leave to File a Proffer and Argument Concerning Events Occurring after the Hearing Panel's Decision. Cert. Pet., App. A, pp. 1a-2a.

Hale now petitions this Honorable Court to issue a writ of *certiorari*.

REASONS FOR DENYING THE WRIT

I. THE DECISION DENYING HALE'S APPLICATION FOR MEMBERSHIP IN THE ILLINOIS BAR IS BASED UPON FACTUAL CONSIDERATIONS RELATING TO HALE'S PAST CONDUCT, LACK OF CREDIBILITY AND FAILURE TO SATISFY HIS BURDEN OF PROOF

"States have a compelling interest in the practice of professions within their boundaries," *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975), and are "free to select their own bars." *Konigsberg v. State Bar of California*, 353 U.S. 252, 273 (1957). *See also In re Summers*, 325 U.S. 561, 570-71 (1945). Accordingly, States "can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the

bar." *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 239 (1957).

In Illinois, a bar applicant shoulders the burden of proving, by clear and convincing evidence, that he has "good moral character and general fitness to practice law." Ill. Sup. Ct. R. 708(b) & 709(b); Ill. Bar Admis. R. 4.1. While Hale objects to perceived ambiguity associated with the "good moral character" standard, it "has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect." *Konigsberg*, 353 U.S. at 262-63.

Hale contends that he has been excluded from Illinois' bar because of his beliefs and speech. The record, however, does not substantiate this claim. The Hearing Panel expressly found that "[t]his case is not about Mr. Hale's First Amendment rights," and refused to recommend certification because Hale lacked credibility and had failed to satisfy his burden of proof. Cert. Pet., App. C, pp. 7a, 8a & 13a. Given the Hearing Panel's stated reasons for refusing certification, and contrary to the argument presented in Hale's *certiorari* petition, this case is resolvable on state law grounds. While it obviously is not the function of *certiorari* to second-guess a State tribunal's factually-dependent determination regarding a litigant's failure to satisfy a burden of proof, grant of *certiorari* essentially would require this Honorable Court to engage in such an analysis.

Moreover, the record amply supports the Hearing Panel's decision. For instance, the Hearing Panel, which heard Hale testify and observed his demeanor, found that "Hale was not candid and open with the panel during the

hearing." Cert. Pet., App. C, p. 12a. This credibility finding is hardly irrational. Indeed, Hale's own witness, Attorney Brian McPheters, described Hale as "certainly less than forthright." Tr. 47. Further, Hale conceded that he lied to the police officer who arrested him after his brother had brandished a pistol at a group of African-Americans.[4] Tr. 185-86. Still more, McPheters harbored "a significant reservation" about whether Hale could be an officer of the court. Tr. 32-33.

Violence in Hale's background also fortifies the Hearing Panel's refusal to recommend certification. Being the driver of a vehicle from which a gun is produced may be considered an act of violence, and under state-law accountability principles, Hale could be considered criminally liable for his brother's actions. *Cf. People v. George*, 263 Ill. App. 3d 968, 636 N.E.2d 682 (1993); *People v. Kosik*, 110 Ill. App. 3d 930, 938-39, 443 N.E.2d 238, 245 (1982). Hale also has been arrested for assault and battery, which by nature are violent offenses. *See* 720 ILCS 5/12-1 (assault); 720 ILCS 5/12-3 (battery). Even more recently (February 1999), an order of protection issued against Hale.

In response to this, Hale complains that the order of protection was based upon an "trivial and isolated incident." Cert. Pet., p. 5. But orders of protection are not entered haphazardly – Illinois law requires a judicial finding that the respondent committed abuse. *See* 725

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[4] Hale also failed to report his conviction for distributing hand bills on his bar application. Tr. 222-24. Hale's law school application omitted mention of certain collegiate disciplinary proceedings. Tr. 225-26.

ILCS 5/112A-14(a); 750 ILCS 60/214(a). That the order entered *ex parte* was a product of Hale's own doing, as he opted not to attend court proceedings because the drive was too far. Tr. 257, 265-67. Certainly, the Hearing Panel, which was not bound by formal rules of evidence, Ill. Bar. Admis. R. 5.3c, was well within its discretion in considering the order of protection.

Hale further claims that the Hearing Panel did not discuss the obstruction of justice incident in its opinion. Hale, however, was questioned extensively about the incident at the hearing. Tr. 182-86. In finding that Hale had not satisfied his burden of proof, the Hearing Panel stressed that it had "considered all the evidence" and "reviewed the entire record." Cert. Pet., App. 8a, 11a & 13a. Consequently, any argument that Hale's obstruction of justice did not factor into the Hearing Panel's decision lacks merit.

In short, this simply is not a case where there are no strikes against the bar applicant's good character. *Cf. Application of Stolar*, 401 U.S. 23, 30 (1971). As opposed to being excluded from Illinois' bar on the basis of beliefs or speech, Hale's past conduct, lack of credibility and inability to meet his burden of proof doomed his bar application. These state law considerations are not fodder for *certiorari*.

II. THE FEDERAL CONSTITUTION IS NOT VIOLATED WHEN A STATE TRIBUNAL MAKES A REASONABLE PREDICTION ABOUT THE LIKELIHOOD OF FUTURE MISCONDUCT

A State undoubtedly has a legitimate interest in determining whether a bar applicant has the requisite character to become a member of the bar. *See Application of Stolar*, 401 U.S. 23, 29 (1971) (plurality); *Baird v. Arizona*, 401 U.S. 1, 7 (1971) (plurality). Hence, it follows that a bar admission committee, which also must consider the rights of the public, possesses the power, if not the duty, to ensure that prospective lawyers will comply with canons of ethics.

Here, the Hearing Panel determined that Hale had not proved that he could comply with the Rules of Professional Conduct. Cert. Pet., App. C., pp. 8a-12a. The Hearing Panel premised this finding on the testimony of all the witnesses, including Hale, and pointed out that Hale viewed professional conduct rules as applying to him only "when he was actually working as a lawyer, and not at any other time." Cert. Pet., App. C, p. 8a. As the Hearing Panel noted, Hale's view is incorrect. *Id.* at 8a-9a. *See In re Chandler*, 161 Ill. 2d 459, 480, 641 N.E.2d 473 (1994) ("It is our duty to supervise the professional conduct of lawyers practicing in Illinois, and fulfillment of that duty necessarily requires inquiry into the private conduct of attorneys to the extent that such conduct relates to professional competence or the dignity of the legal profession."). Furthermore, Hale's "own words" led the Hearing Panel to conclude that he "intends to follow the Rules only when he feels like it, and feels free to disregard them at any time, as he deems necessary." Cert.

Pet., App. C, p. 9a. This factual determination was plainly grounded in a first-hand evaluation of Hale's testimonial demeanor, and is not subject to upset by a court of review.

While Hale objects to the predictive features of the Hearing Panel's opinion, a State does not violate the Constitution when it reasonably assesses the likelihood of future misconduct. As this Court has stated, "from a legal point of view there is nothing inherently unattainable about a prediction of future criminal conduct." *Schall v. Martin*, 467 U.S. 253, 278 (1984). *See also Jurek v. Texas*, 428 U.S. 262, 275 (1976) (plurality) ("prediction of future criminal conduct is an essential element in many of the decisions rendered throughout our criminal justice system"). Indeed, this Court has approved the use of past misconduct to predict future misconduct in a variety of contexts. *See, e.g., Kansas v. Hendricks*, 521 U.S. 346 (1997) (civil commitment); *United States v. Salerno*, 481 U.S. 739, 751 (1987) (bail worthiness); *Skipper v. South Carolina*, 476 U.S. 1, 5 (1986) (sentencing). Bar admission proceedings should be no different, especially in view of the Committee's unquestioned duty of protecting the public from unsavory attorneys.

Moreover, this Court accords substantial weight "to government employers' reasonable predictions of disruption, even when the speech involved is on a matter of public concern." *Waters v. Churchill*, 511 U.S. 661, 673 (1994). The same should hold true here. Given Hale's history of brushes with the law, disruptive behavior, misconduct and lack of veracity, the Hearing Panel's finding that Hale would not abide by professional conduct rules is well-supported by the record.

III. THE FIRST AMENDMENT DOES NOT REQUIRE HALE'S ADMITTANCE TO ILLINOIS' BAR

Hale's contention that he has been excluded from Illinois' bar because of his beliefs and speech initially flows from a faulty legal premise. Hale cites *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), for the proposition that "[f]reedom to believe what one will 'is absolute.' " Cert. Pet., p. 6. Hale, however, fails to cite the other half of *Cantwell's* syllogism, that is, "[c]onduct remains subject to regulation for the protection of society." *Cantwell*, 310 U.S. at 304. In addition, Hale overlooks the fact that certain types of speech do not enjoy First Amendment immunity, *Bose Corp. v. Consumer Union of United States*, 466 U.S. 485, 503-04 (1984) (discussing various categories), including malicious nomenclature of the kind endorsed by Hale, *see, e.g., People v. Beauharnais*, 408 Ill. 512, 517, 97 N.E.2d 343 (1951), *aff'd*, 343 U.S. 250 (1952), *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 & 574 (1942), as well as instances in which racial enmity motivates conduct. *See Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

Hale maintains that "[l]awyers do not relinquish their constitutional rights as a condition of practicing law," Cert. Pet., p. 8, but fails to come to grips with the principle that "[m]embership in the bar is a privilege burdened with conditions." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1066 (1991) (quoting *In re Rouss*, 221 N.Y. 81, 84, 116 N.E.2d 782, 783 (1917) (Cardozo, J.)). An attorney's unfettered right to free speech both inside and outside the courtroom is limited. *See Gentile*, 501 U.S. at 1071. *See also Florida Bar v. Went For It, Inc.*, 515 U.S. 618

(1995). As opposed to being an absolute right, attorney speech is subject to a balancing test. *Gentile*, 501 U.S. at 1075 ("When a state regulation implicates First Amendment rights, the Court must balance those interests against the State's legitimate interest in regulating the activity in question.").

Beyond peradventure, Illinois has a strong interest in preventing racial discrimination by representatives of its justice system. *See Georgia v. McCollum*, 505 U.S. 42, 50 (1992) (racial discrimination is "repugnant in all contexts"); *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 618 (1991) ("over a century of jurisprudence [has been] dedicated to the elimination of race prejudice within" the justice system; "racial discrimination mars the integrity of the judicial system and prevents the idea of democratic government from becoming a reality"). As evident from *Edmonson* and *McCollum* (which outlawed racially discriminatory peremptory challenges by private attorneys), a State has the authority to prevent private attorneys from resorting to racial animus in the practice of law.

Albeit the record does not support the argument that Hale has been excluded from Illinois' bar because of beliefs or speech, even if that were the case, the First Amendment would not be violated under the present circumstances. Stated simply, Illinois' legitimate interest in preventing racial discrimination outweighs Hale's interest in spewing racial venom.[5] This Honorable Court,

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[5] *Bond v. Floyd*, 385 U.S. 116 (1966), does not require Hale's bar admittance. Unlike bar admission proceedings in which an

however, need not navigate these waters since, in the first instance, factors independent of Hale's beliefs or speech engendered his exclusion from Illinois' bar.

CONCLUSION

For the reasons stated above, the petition for *certiorari* should be denied.

Respectfully submitted,

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ability to conscientiously take an oath constitutes an element of the good moral character eligibility requirement, *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 401 U.S. 154, 166 (1971), an ability to take the oath in good faith was not an independent eligibility requirement for the publically-elected House of Representatives' position in *Bond*. The *Bond* Court also emphasized that its ruling could be different if the oath-taker promised to take the "oath pro forma while declaring or manifesting his disagreement with or indifference to the oath." 385 U.S. at 132. That is the case here, where Hale admitted that his "religion" requires him to place his "own race above every other loyalty." Tr. 192. But more so than his inability to take the oath in good faith, Hale's non-certification was caused by his past misconduct, lack of credibility and failure to meet his burden of proof.